



COMBINED SYSTEMS INC Penalty Payment
Carol Amend to: JeannaR Henry, John Ruggero

05/27/2010 12:01 PM

History: This message has been replied to.

I believe this is the last payment that Combined Systems has to make.

— Forwarded by Carol Amend/R3/USEPA/US on 05/27/2010 12:01 PM —

From: CINWD AcctsReceivable
To: Carol Amend/R3/USEPA/US@EPA, Melissa Toffel/R3/USEPA/US@EPA, Lori Weidner/CI/USEPA/US@EPA, Lydia Guy/R3/USEPA/US@EPA
Date: 05/27/2010 10:01 AM
Subject: RCRA3100001 COMBINED SYSTEMS INC
Sent by: Alex Berenson



2731059R26E.pdf This collection was received on 5/24/10



Document Review IFMS Document: BD 2731059R026 05/27/10

Document Summary: General Ledger Entries

Document: BD 2731059R026

SFO: AP27

Date: 11/24/09

Amount: \$65,000.00

Collected: \$65,581.60

Due From: COMBINED SYSTEMS INC

98 CUTTERMILL RD

STE 231,

GREAT NECK, NY 11021

Due Date: 05/23/10

Comments: RCRA3100001

Interest: 05/01/10 \$661.44

Handling: 05/23/10 \$15.00

Penalty: \$0.00

Writeoff: \$0.00

Document Details:

Line	Line Amt	Collected	Writeoff	Closed	Int Rate	Reporting Category	BFY	Fund
997	\$661.44	\$661.44	\$0.00	\$661.44	0.000	59-INSTALL F AND P RCRA	2010	1435
001	\$65,000.00	\$64,905.16	\$0.00	\$64,905.16	3.000	59-INSTALL F AND P RCRA	2010	1099
998	\$15.00	\$15.00	\$0.00	\$15.00	0.000	59	2010	1099

Document Activity:

Date	Ref Amount	Related Document	Direction	Date	Ref Amount	Related Document	Date
05/25/10	\$10,581.60	CR 2731059R26E	Forward				
04/20/10	\$11,000.00	CR 2731059R26D	Forward				
03/24/10	\$11,000.00	CR 2731059R26C	Forward				
02/19/10	\$11,000.00	CR 2731059R26B	Forward				
01/21/10	\$11,000.00	CR 273159R026A	Forward				
12/22/09	\$11,000.00	CR 2731059R026	Forward				
12/02/09	\$531.60	Increase					
12/01/09	\$65,000.00	Increase					

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http://iasint.rtpnc.epa.gov/neis/ifms_doc.resolve

This web page was last updated on 10/13/2009.

This data was last updated on 05/27/2010 09:57

This page coordinated by: [Dee Hinson](#)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

John Ruggero
Senior Assistant Regional Counsel

Mail Code: 3RC30
Phone: (215)814-2142
Facsimile: (215)814-2603

November 24, 2009

OVERNIGHT DELIVERY

Danielle E. Mettler, Esq.
Hiscock & Barclay
2000 HSBC Plaza
100 Chestnut Street
Rochester, NY 14604

Re: *In the Matter of: Combined Systems, Inc.*
EPA Docket No. RCRA-03-2010-0001

Dear Ms. Mettler:

Enclosed is a copy of the fully executed Consent Agreement and Final Order ("CAFO"), filed today with the Regional Hearing Clerk, in the above-referenced matter. A copy of the cover memo transmitting the CAFO to the Regional Judicial Officer for signature is also enclosed.

Combined Systems, Inc. must ensure that the penalty is remitted in accordance with the procedures and deadlines set forth in the CAFO.

The Environmental Protection Agency - Region III frequently issues a press release to announce the filing of a CAFO. If a press release will be issued regarding this CAFO, a copy will be faxed to you or your designee simultaneously with its transmittal to the news wire services.

We appreciate the cooperation and time spent by CSI's management and you in resolving this matter. Please do not hesitate to contact me if any questions arise.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Ruggero".

John Ruggero

Enclosures

cc: Ms. J. Henry (3LC70) ✓
Regional Hearing Clerk (3RC00)
Ms. Lori Wiedner (CFMO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

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2009 NOV 24 PM 4:38

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:

Combined Systems, Inc.
98 Cuttermill Road, Ste 231
Great Neck, NY 11021

Respondent

Combined Systems, Inc. and
Combined Tactical Systems, Inc.
388 Kinsman Road
Jamestown, PA 16134

EPA ID No. PAR000039875

Facility

Docket No. RCRA-03-2010-0001

CONSENT AGREEMENT

Proceeding Under Section 3008(a) and (g)
of the Resource Conservation and
Recovery Act, *as amended*, 42 U.S.C.
§ 6928(a) and (g)

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA"), and Combined Systems, Inc. ("Respondent"), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, this CA and the attached Final Order ("FO," hereinafter jointly referred to as the "CAFO") both commence and conclude the above-captioned administrative proceeding against Respondent, brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g), for alleged violations of RCRA at Respondent's facility at 388 Kinsman Road, Jamestown, Pennsylvania (the "Facility").
2. On January 30, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, EPA granted final authorization to the Commonwealth of Pennsylvania to administer its state hazardous waste management program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Revised Pennsylvania Hazardous Waste Regulations ("PaHWR") were authorized by EPA on September 26, 2000 (effective November 27, 2000). Additional PaHWR amendments were authorized by EPA on January 20, 2004 (effective March 22, 2004) and April 29, 2009 (effective June 29, 2009). Through such

authorizations, the authorized PaHWR set forth at 25 Pa. Code Ch. 260a-266a, 266b, and 268a-270a have become requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA. *See*, 65 Fed. Reg. 57734 (September 26, 2000), 69 Fed. Reg. 2674 (January 20, 2004), and 74 Fed. Reg. 19453 (April 29, 2009).

3. The authorized PaHWR that became effective on November 27, 2000 incorporate by reference certain federal hazardous waste management regulations that were in effect on May 1, 1999. The authorized PaHWR that became effective on March 22, 2004 incorporate by reference certain federal hazardous waste management regulations that were adopted between July 7, 1999 and June 28, 2001. The factual allegations and legal conclusions in this CAFO are based on the PaHWR authorized and in effect at the time of the violations alleged herein. The revisions to the PaHWR that were authorized in 2004 and 2009 are not applicable to the violations set forth herein.
4. Prior to issuing this CAFO, EPA provided notice to the Commonwealth of Pennsylvania, in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this CA.
6. Except as provided in paragraph 5, Respondent neither admits nor denies the specific factual allegations set forth in this CA.
7. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the FO, or the enforcement of this CAFO.
8. For the purposes of this proceeding, Respondent hereby expressly waives any right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Respondent shall bear its own costs and attorney's fees incurred in connection with this proceeding.

Findings of Fact and Conclusions of Law

11. Complainant has determined that Respondent has violated RCRA, and adopts the following findings of fact and conclusions of law in accordance with 40 C.F.R. §§ 22.18(b)(2) and .14(a)(2) and (3).
12. Respondent, Combined Systems, Inc., is a corporation organized on or about March 19, 1981 pursuant to the laws of the State of New York.

13. Respondent is, and was at the time of the violations alleged herein, a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and as defined in 25 Pa. Code § 260a.10.
 14. Pursuant to 25 Pa. Code § 260a.10, "[f]acility" means, inter alia, "[t]he land, structures and other appurtenances or improvements ... where hazardous waste is treated, stored or disposed."
 15. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, "hazardous waste" means "a hazardous waste as defined in [40 C.F.R. § 261.3]"
 16. 25 Pa. Code § 261a.1 incorporates by reference 40 C.F.R. § 261.3(a), which provides, in relevant part:
 - (a) A solid waste, as defined in [40 C.F.R.] § 261.2, is a hazardous waste if:
 - (1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and
 - (2) It meets any of the following criteria:
 - (i) It exhibits any of the characteristics of hazardous waste identified in [40 C.F.R. §§ 261.20-.24]
 - (ii) It is listed in [40 C.F.R. §§ 261.30-.38]
 - ***
 - (iv) It is a mixture of solid waste and one or more hazardous wastes listed in [40 C.F.R. §§ 261.30-.38]
 17. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, "generator" means "any person, by site, whose act or process produces hazardous waste identified or listed in [40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation."
 18. Since at least October 2004, Respondent has generated more than 1,000 kilograms of hazardous waste per month at the Facility.
 19. Since at least 1996, Respondent has been a "generator" at the Facility, as that term is defined in 25 Pa. Code § 260a.1.
 20. On June 26, 2007, representatives from EPA Region III and the Pennsylvania Department of Environmental Protection ("PADEP") inspected Respondent's Facility to determine its compliance with the hazardous waste management requirements of RCRA Subtitle C and the authorized PaHWR.
- COUNT I**
(Operating a facility without a permit or interim status)
21. The allegations in paragraphs 1 through 20, above, are incorporated herein by reference as though fully set forth at length.

22. RCRA § 3005(a), 42 U.S.C. § 6925(a), in pertinent part, prohibits treatment, storage, and disposal of hazardous waste and construction of any new facility except in accordance with a permit ("RCRA permit") issued pursuant to that provision.
23. RCRA § 3005(e), 42 U.S.C. § 6925(e), provides, in pertinent part, that any person who owns or operates a facility required to have a permit under RCRA § 3005, which facility was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory provisions that render the facility subject to the requirement to have a permit, has complied with the notification requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), and has applied for a permit under RCRA § 3005, shall be treated as having been issued such permit (*i.e.*, "interim status") until such time as final administrative disposition of such application is made.
24. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.70, provides, in pertinent part with exceptions not relevant to this CA, that:
 - (a) Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit [for the treatment, storage, or disposal of any hazardous waste] shall have interim status and shall be treated as having been issued a permit to the extent he or she has:
 - (1) Complied with the requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity.
 - (2) Complied with the requirements of [40 C.F.R.] § 270.10 governing submission of part A applications.
25. 25 Pa. Code § 270a.1 incorporates by reference 40 C.F.R. § 270.1(b), which provides, in pertinent part, that owners and operators of hazardous waste management facilities must have "interim status" or a permit for the treatment, storage, or disposal of any hazardous waste, and that the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received such a permit is prohibited.
26. Respondent has never obtained a permit, pursuant to RCRA § 3005(a) or 25 Pa. Code § 270a.1, for the treatment, storage, or disposal of hazardous waste.
27. Respondent has never had "interim status," as described in RCRA § 3005(e) and 40 C.F.R. § 270.70, in lieu of a permit for the treatment, storage, or disposal of hazardous waste at the Facility.
28. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, "container" means a "portable device in which a material is stored, transported, treated, disposed of, or otherwise handled."
29. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a), which provides, in pertinent part with exceptions not relevant to this matter:

a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) In containers and the generator complies with the applicable requirements of subparts I ... of 40 CFR part 265; and/or

* * * *

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container ... is labeled or marked clearly with the words "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR part 265, with § 265.16, and with 40 CFR [§] 268.7(a)(5).

* * * *

30. Pursuant to the provisions of RCRA § 3005(a) and (e) and 25 Pa. Code §§ 270a.1 and 262a.10 referenced above, Respondent, as a generator of hazardous waste who has not had interim status or a permit for the storage of hazardous waste, has been prohibited from storing hazardous waste at its Facility since it began operating in 1996, unless Respondent qualified for an exemption from the RCRA permit requirement by, among other things, managing each container of hazardous waste generated at the Facility in accordance with 40 C.F.R. Part 265, subpart I (§§ 265.170 - .178) ; clearly labeling each container with the date upon which each period of accumulation begins; clearly and visibly marking each container with the words "Hazardous Waste;" and complying with 40 C.F.R. § 265.16.
31. At the time of the EPA inspection on June 26, 2007, Respondent was storing waste materials in five (5) one-cubic yard cardboard boxes labeled with the words "Hazardous Waste" in Building O at the Facility.
32. One of the one-cubic yard cardboard boxes ("Box 1") referred to in paragraph 31, above, contained filters from masks/respirators or ventilation units, liners from contaminated drums, and other debris generated from the manufacturing of tear-gas products which includes "CS," chloroacetophenone, and other chemicals.
33. The materials in Box 1, referred to in paragraph 32, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Numbers D001 and U149.
34. Hazardous waste was first placed in Box 1 on May 21, 2007.
35. One of the one-cubic yard cardboard boxes ("Box 2") referred to in paragraph 31, above, contained slurry rags and paper waste mixed with chemical wastes generated from the manufacture of smoke and tear-gas canisters.
36. The materials in Box 2 referred to in paragraph 35, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number D001.

37. Hazardous waste was first placed in Box 2 on April 18, 2007.
38. One of the one-cubic yard cardboard boxes ("Box 3") referred to in paragraph 31, above, contained rags mixed with waste acetone generated from cleaning canisters.
39. The materials in Box 3 referred to in paragraph 38, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number U002. (Complainant notes that the Hazardous Waste Number assigned by Respondent to this waste is incorrect.)
40. Hazardous waste was first placed in Box 3 on May 21, 2007.
41. One of the one-cubic yard cardboard boxes ("Box 4") referred to in paragraph 31, above, contained rags containing waste acetone generated from cleaning canisters prior to printing, silk screening or taping.
42. The materials in Box 4 referred to in paragraph 41, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Number U002. (Complainant notes that the Hazardous Waste Number assigned by Respondent to this waste is incorrect.)
43. Hazardous waste was first placed in Box 4 on May 21, 2007.
44. One of the one-cubic yard cardboard boxes ("Box 5") referred to in paragraph 31, above, contained personal protection equipment (e.g., disposable coveralls and gloves) mixed with hazardous waste generated by Respondent during the production of "CS," pellet press operation, and final assembly of tear-gas and smoke munitions.
45. The materials in Box 5 referred to in paragraph 44, above, were "hazardous waste" identified by Respondent as having Hazardous Waste Numbers D001 and U149.
46. Hazardous waste was first placed in Box 5 on April 18, 2007.
47. The five one-cubic yard cardboard boxes referred to in paragraphs 31-46, above, are "containers" as defined in 25 Pa. Code § 260a.1.
48. At the time of the EPA inspection on June 26, 2007, the date upon which the period of hazardous waste accumulation began was not marked where visible for inspection on any of the five one-cubic yard cardboard boxes referred to in paragraphs 31-47, above.
49. At the time of the EPA inspection on June 26, 2007, Respondent was storing unused expired chemicals in two 55-gallon drums labeled with the words "Hazardous Waste" inside a bulk shipping container which Respondent designated as "Container A-4." Respondent had marked June 26, 2007 on each of these two 55-gallon drums as the date upon which the period of hazardous waste accumulation began.

50. The chemicals in the drums referred to in paragraph 49, above, are "hazardous waste" identified by Respondent as having Hazardous Waste Number D001.
51. The two 55-gallon drums referred to in paragraphs 49-50, above, are "containers" as defined in 25 Pa. Code § 260a.1.
52. Respondent determined that the chemicals in the drums referred to in paragraphs 49-51, above, were hazardous waste on June 20, 2007 and began accumulating hazardous waste in those drums on that date.
53. The date marked by Respondent on each of the drums referred to in paragraphs 49-52, above, to indicate the date upon which the period of hazardous waste accumulation began was incorrect.
54. From October 2004 until June 26, 2007, Respondent marked containers of hazardous waste with the date on which such containers became full rather than the date on which accumulation of hazardous waste in such containers began, as required by 40 C.F.R. § 262.34(a)(2).
55. By failing to clearly and/or accurately mark the date on which the period of accumulation began for each container referred to in paragraphs 31-54, above, in accordance with 40 C.F.R. § 262.34(a)(2), Respondent failed to qualify for exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1, from October 2004 to June 26, 2007.
56. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), which requires that generators comply with 40 C.F.R. § 265.174. 40 C.F.R. § 265.174 provides, in relevant part, that "[a]t least weekly, the owner or operator must inspect areas where containers are stored ... [to] look for leaking containers and for deterioration of containers."
57. During the period between October 2004 and June 26, 2007, Respondent was routinely using locations it designated as "Building O" and "Container A-4" for the storage of more than 55 gallons of hazardous waste in containers at the Facility.
58. Respondent did not inspect Building O at least weekly between July 22, 2005 and June 22, 2007.
59. Respondent did not inspect Container A-4 at least weekly between June 8, 2004 and June 26, 2007.
60. By failing to inspect container storage areas, Building O and Container A-4, at least weekly, in accordance with 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174, as alleged in paragraphs 58 and 59, above, Respondent failed to qualify for an exemption, under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.

61. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a)(4), which requires that generators comply with 40 C.F.R. § 265.16. 40 C.F.R. § 265.16 provides, in relevant part:

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of [40 C.F.R. Part 265]. ...

* * * *

(c) Facility personnel must take part in an annual review of the initial training required in [40 C.F.R. § 265.16(a)].

* * * *

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under [40 C.F.R. § 265.16(d)(1)] ...;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under [40 C.F.R. § 265.16(d)(1)];

(4) Records that document that the training or job experience required under paragraphs [40 C.F.R. § 265.16(a), (b), and (c)] has been given to, and completed by, facility personnel.

62. To qualify for the exemption, pursuant to 40 C.F.R. § 262.34(a), from the requirement to have a permit for the storage of hazardous waste, Respondent was required by 25 Pa. Code § 262a.10 to train all facility personnel responsible for hazardous waste management and to maintain documents and records in accordance with 40 C.F.R. § 265.16.
63. Respondent provided hazardous waste training for employees of the Facility during October 2005 and February 2007.
64. Respondent did not provide hazardous waste training for employees of the Facility in 2004 and 2006.
65. Between October 2004 and December 28, 2007, Respondent did not prepare and/or maintain records of documented job titles, job descriptions, or written descriptions of the type and amount of both introductory and continuing training that would be given to each person who held a position at the Facility related to hazardous waste management during that time.
66. By failing to provide hazardous waste training for employees at the Facility during 2004 and 2006, in accordance with 40 C.F.R. § 265.16(a) and/or (c), Respondent was not

complying with the conditions for an exemption from permit requirements under 25 Pa. Code § 262a.10, and therefore failed to qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.

67. By failing to maintain records of training as required by 40 C.F.R. § 265.16(d), Respondent was not complying with the conditions for an exemption from permit requirements under 25 Pa. Code § 262a.10, and therefore failed to qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.

68. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(c), which provides, in pertinent part with exceptions not relevant to this matter:

(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste ... in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

(i) Complies with [40 C.F.R.] ... § 265.173(a) ...; and

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

* * * *

69. At the time of the EPA inspection on June 26, 2007, Respondent was storing, in a 14-gallon red fire can in Building A at the Facility, rags mixed with waste acetone that were used to clean the exterior parts of shells and/or grenades.

70. The materials in the red fire can, referred to in paragraph 69, above, were "hazardous waste" and are identified by Hazardous Waste Numbers D001 and F003.

71. At the time of the EPA inspection on June 26, 2007, the 14-gallon red fire can, referred to in paragraphs 69 and 70, above, was not labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.

72. At the time of the EPA inspection on June 26, 2007, Respondent was storing, in a 55-gallon drum in Building C at the Facility, spent acetone used to clean taped or glued parts assembled in Building C.

73. The material in the 55-gallon drum, referred to in paragraph 72, above, was "hazardous waste" and is identified by Hazardous Waste Numbers D001 and F003.

74. At the time of the EPA inspection on June 26, 2007, the 55-gallon drum, referred to in paragraphs 72 and 73, above, was not labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.

75. At the time of the EPA inspection on June 26, 2007, Respondent was storing, in a 14-gallon red fire can in Building G at the Facility, rags mixed with acetone and "Easisolve 120" which were used to clean the exterior parts of shells and/or grenades.
76. The materials in the red fire can, referred to in paragraph 75, above, were "hazardous waste" and are identified by Hazardous Waste Numbers D001 and F003.
77. At the time of the EPA inspection on June 26, 2007, the red fire can, referred to in paragraphs 75 and 76, above, was not labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.
78. At the time of the EPA inspection on June 26, 2007, Respondent was storing, in a 55-gallon drum in Building H at the Facility, spent acetone used to clean taped or glued parts assembled in Building H.
79. The material in the 55-gallon drum, referred to in paragraph 78, above, was "hazardous waste" and is identified by Hazardous Waste Numbers D001 and F003.
80. The 55-gallon drum, referred to in paragraphs 78 and 79, above, was not labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.
81. At the time of the EPA inspection on June 26, 2007, Respondent was storing materials in two 30-gallon drums outside of Building I at the Facility.
82. One of the drums ("Drum 1") referred to in paragraph 81, above, contained hazardous waste mixed with personal protection equipment, e.g., suits, gloves, and hoods, worn by workers during processing of potassium based fuel mix for smoke and tear-gas canisters, mixing of fuel with smoke compositions, the pelletizing of fuel mixtures into pellets, and the transfer of pellets into canisters.
83. The materials in Drum 1 referred to in paragraph 82, above, were "hazardous waste" and are identified by Hazardous Waste Numbers D001 and U149.
84. The materials in one of the drums ("Drum 2") referred to in paragraph 81, above, contained hazardous waste chemicals mixed with "slurry paper" waste which is used to cover the tops of tables during slurry processing to catch any drippings.
85. The materials contained in Drum 2, referred to in paragraph 84, above, were "hazardous waste" and are identified by Hazardous Waste Number D001.
86. The two 30-gallon drums, referred to in paragraphs 81 through 85, above, were not labeled with the words "Hazardous Waste" or with other words that identified the contents of the containers.

87. At the time of the EPA inspection on June 26, 2007, Respondent was storing rags that had been dipped in acetone used to remove excess epoxy from metal rods in at least one of several 14-gallon red fire cans located in Building MS-2 at the Facility.
88. The mixture of acetone and rags contained in at least one of the 14-gallon red fire cans, referred to in paragraph 87, above, was "hazardous waste" and is identified by Hazardous Waste Number D001.
89. The 14-gallon red fire cans referred to in paragraphs 87 and 88, above, were not labeled with the words "Hazardous Waste" or with other words that identified the contents of the containers.
90. By failing to mark containers of hazardous waste as alleged in paragraphs 71, 74, 77, 80, 86, and 89, above, with the words "Hazardous Waste," or with other words that identified the contents of the containers, in accordance with 25 Pa. Code § 262a.10, Respondent failed to qualify for exemption, under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) and (c), from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.
91. To qualify for the exemption, pursuant to 40 C.F.R. § 262.34, from the requirement to have a permit for the storage of hazardous waste, Respondent was required by 25 Pa. Code § 262a.10 [40 C.F.R. § 262.34(a) and/or (c)(1)(i)] to manage containers of hazardous waste in accordance with 40 C.F.R. § 265.173(a), which provides that "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."
92. At the time of the EPA inspection on June 26, 2007, Respondent was storing spilled, black/smokeless powder or powder from cut shells in Building D2 at the Facility in one open 5-gallon fiber drum labeled with the words "Hazardous Waste."
93. The material in the open 5-gallon fiber drum, referred to in paragraph 92, above, was "hazardous waste" and is identified by Hazardous Waste Number D001.
94. At the time of the EPA inspection on June 26, 2007, the fiber drum referred to in paragraphs 92 and 93, above, was not closed.
95. At the time of the EPA inspection on June 26, 2007, no waste was being added to or removed from the open fiber drum referred to in paragraphs 92-94, above.
96. By failing to keep closed the fiber drum referred to in paragraphs 92-95, above, when waste was not being added to or removed from it, as required by 40 C.F.R. § 265.173(a), Respondent was not complying with the conditions for an exemption from permit requirements under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) and (c), and therefore failed to qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.

97. 25 Pa. Code § 260a.3(b) provides that "Federal regulations that are cited in [the PaHWR] or that are cross referenced in the Federal regulations incorporated by reference include any Pennsylvania modifications made to those Federal regulations."
98. 25 Pa. Code § 265a.175 provides, in pertinent part:
- (a) Container storage areas shall have a containment system capable of collecting and holding spills, leaks and precipitation. The containment system shall:
 - (1) Have an impervious base underlying the containers which is free of cracks or gaps so as to contain leaks, spills and accumulated rainfall. All joints in an impervious base shall be sealed with appropriate sealants.
 - (2) Provide efficient drainage from the base to a sump or collection system.
 - (3) Have sufficient capacity to contain the entire volume of the largest container, or 10% of the total volume of all the containers, whichever is greater.
- * * * *
99. 25 Pa. Code § 265a.179 incorporates by reference 40 C.F.R. § 264.175, which provides, in pertinent part with exceptions not relevant to this matter, that:
- (a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this section ...
 - (b) A containment system must be designed and operated as follows:
 - (1) A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills and accumulated precipitation until the collected material is detected and removed;
 - (2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation ...
100. Respondent has stored both solid and liquid hazardous waste in containers in Container A-4, referred to in paragraphs 49 and 57, above, at various times between October 2004 and June 26, 2007. Container A-4 is located outdoors, directly above the land.
101. The floor of Container A-4 is constructed of wood and is not sufficiently impervious to contain leaks, spills and/or accumulated precipitation until the collected materials are detected and removed.
102. The floor of Container A-4 is not sloped or operated to drain and remove liquids resulting from leaks, spills, or precipitation.
103. By storing liquid hazardous waste, from October 2004 until June 26, 2007, in containers in Container A-4, which did not have an impervious and sloped base designed and operated in accordance with the secondary containment standards set forth in 25 Pa. Code §§ 265a.175(a) and 265a.179 and 40 C.F.R. § 264.175, as alleged in paragraphs 100-102, above, Respondent was not complying with the conditions for an exemption from permit requirements under 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R.

§ 262.34(a) (which in turn incorporates by reference the above-cited secondary containment standards), and therefore failed to qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1.

104. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, "owner" means "the person who owns a facility or part of a facility."
105. Since at least 1996, Respondent has been the "owner" of the Facility, as that term is defined in 25 Pa. Code § 260a.1.
106. Pursuant to 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, "operator" means "the person responsible for the overall operation of a facility."
107. Since at least 1996, Respondent has been the "operator" of the Facility, as that term is defined in 25 Pa. Code § 260a.1.
108. For each of the reasons alleged in paragraphs 55, 60, 66, 67, 90, 96, and 103, above, Respondent did not qualify for an exemption from the permit requirements of RCRA § 3005(a) and 25 Pa. Code § 270a.1, and, therefore, was prohibited from storing hazardous waste at the Facility without a permit from October 2004 to December 28, 2007.
109. From October 2004 to June 26, 2007, Respondent violated RCRA § 3005(a) and 25 Pa. Code § 270a.1 by storing containers of hazardous wastes under the circumstances alleged in paragraphs 31 through 102, above, without a permit to store such waste, or "interim status," and without qualifying for an exemption from the permit requirement in accordance with 25 Pa. Code § 262a.10, for which violation RCRA § 3008(a) and (g) authorizes EPA to assess a penalty.

COUNT II

(Failure to keep container closed)

110. The allegations in paragraphs 1 through 109 are incorporated herein by reference as though fully set forth at length.
111. Because it failed to comply with the requirements of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34, Respondent's Facility was required to comply with the requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities set forth at 25 Pa. Code Ch. 264a.
112. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.173(a), which provides that "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

113. Pursuant to 25 Pa. Code § 264a.1, Respondent was required to keep the 5-gallon fiber drum, referred to in paragraphs 92-95, above, closed when waste was not being added to or removed from it.
114. Respondent's failure to keep a container of hazardous waste closed when nothing was being added to or removed from that container, as alleged in paragraphs 92-95, above, violates 25 Pa. Code § 264a.1.

COUNT III

(Failure to Conduct Weekly Inspections of Central Hazardous Waste Accumulation Areas)

115. The allegations in paragraphs 1 through 114, above, are incorporated herein by reference as though fully set forth at length.
116. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.174, which provides, in relevant part, that, "[a]t least weekly, the owner or operator must inspect areas where containers are stored"
117. By failing to conduct weekly inspections of Building O and Container A-4, as alleged in paragraphs 58 and 59, above, Respondent violated 25 Pa. Code § 264a.1.

COUNT IV

(Failure to train employees responsible for hazardous waste management)

118. The allegations in paragraphs 1 through 117, above, are incorporated herein by reference as though fully set forth at length.
119. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.16, which requires, in pertinent part:

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of [40 C.F.R. Part 264]. ...

* * * *

(c) Facility personnel must take part in an annual review of the initial training required in [40 C.F.R. § 264.16(a)].

(d) The owner or operator must maintain the following documents and records at the facility:

- (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filing each job;
- (2) A written job description for each position listed under (d)(1) of this section.

...

(3) A written description of the type and amount of both introductory and continuing training that will be given to each employee filling a position listed under (d)(1) of this section;

(4) Records that document that the training or job experience required under 40 C.F.R. § 264.16(d)(1), (2), and (3), has been given to and completely by facility personnel.

120. As an owner and operator, Respondent has been required to train all Facility personnel responsible for hazardous waste management in accordance with 40 C.F.R. § 264.16(a) and (c).
121. By failing to provide hazardous waste management training for employees at the Facility in 2004 and 2006, as alleged in paragraph 64, above, Respondent violated 25 Pa. Code § 264a.1.

COUNT V

(Failure to document hazardous waste management training program)

122. The allegations in paragraphs 1 through 121, above, are incorporated herein by reference as though fully set forth at length.
123. As an owner and operator, Respondent has been required to maintain documents and records pertaining to hazardous waste management training in accordance with 40 C.F.R. 264.16(d).
124. By failing to maintain records to document training for each position related to hazardous waste management at the Facility between October 2004 and December 28, 2007, as alleged in paragraph 65, above, Respondent violated 25 Pa. Code § 264a.1.

COUNT VI

(Failure to keep records of weekly storage facility inspections)

125. The allegations in paragraphs 1 through 124, above, are incorporated herein by reference as though fully set forth at length.
126. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.15, which provides, in relevant part, that:
- (a) The owner or operator must inspect his facility for malfunctions and deterioration... and discharges
* * * *
- (b)(4) ... At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174
* * * *
- (d) The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. ...

127. Respondent did not record inspections of Building O at the Facility from July 22, 2005 through June 22, 2007 and, as of June 26, 2007, had not kept any records of any such inspections performed during that period.
128. Respondent did not record inspections of Container A-4 at the Facility from June 8, 2004 through June 26, 2007 and, as of June 26, 2007, had not kept any records of any such inspections performed during the three-year period immediately preceding that date.
129. By failing to keep records of inspections of Building O, for the period July 22, 2005 through June 22, 2007, and Container A-4, for the period June 27, 2004 through June 26, 2007, as required by 40 C.F.R. § 264.15(d), Respondent violated 25 Pa. Code § 264a.1.

COUNT VII

(Failure to provide a containment system for hazardous waste storage areas)

130. The allegations in paragraphs 1 through 129, above, are incorporated herein by reference as though fully set forth at length.
131. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.175, which is quoted in relevant part in paragraph 99, above.
132. As an owner and operator, Respondent has been required to store any containers of liquid hazardous waste only in an area with secondary containment designed and operated in accordance with 40 C.F.R. § 264.175.
133. By storing liquid hazardous waste, from October 2004 until June 26, 2007, in containers in Container A-4, which did not have an impervious and sloped base designed and operated in accordance with 40 C.F.R. § 264.175, as alleged in paragraphs 100-102, above, Respondent violated 25 Pa. Code § 264a.1.

COUNT VIII

(Failure to make a waste determination)

134. The allegations in paragraphs 1 through 133, above, are incorporated herein by reference as though fully set forth at length.
135. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.11, which requires, in relevant part, that "[a] person who generates a solid waste, as defined in 40 CFR [§] 261.2, must determine if that waste is a hazardous waste"
136. Prior to June 26, 2007, Respondent generated, stored, and disposed of approximately the following numbers of waste aerosol cans during the years indicated in the table below:

Year	2004	2005	2006	2007
No. of aerosol cans	383	185	156	68

137. The aerosol cans referred to in paragraph 136, above, including the product and propellant residues contained in those cans, are "solid waste" as that term is defined in 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.2.
138. Respondent routinely sent the waste aerosol cans, referred to in paragraphs 136 and 137, above, off-site for disposal as municipal solid waste.
139. Prior to the EPA inspection on June 26, 2007, Respondent had never determined whether its discarded aerosol cans, including the product and propellant residues contained in those cans, were hazardous wastes.
140. By failing to determine whether a solid waste, *i.e.*, the waste aerosol cans and their contents, which Respondent discarded and sent off-site for disposal, were hazardous wastes, Respondent violated 25 Pa. Code § 262a.10.

COUNT IX

(Failure to Properly Manifest Off-Site Shipments of Hazardous Waste)

141. The allegations in paragraphs 1 through 140, above, are incorporated herein by reference as though fully set forth at length.
142. 25 Pa. Code § 262a.10 incorporates by reference, in part, 40 C.F.R. Part 262, including the Appendix thereto (Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their instructions)), which in turn, provides that generators of hazardous waste must complete and use such manifest for both intrastate and interstate transportation.
143. 25 Pa. Code § 262a.20(a)(1) provides that generators must complete the manifest form in its entirety and distribute copies of such manifest in accordance with its instructions. 40 C.F.R. § 262.23 provides that:
 - (a) The generator must:
 - (1) Sign the manifest certification by hand;
 - (2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and
 - (3) Retain one copy, in accordance with [40 C.F.R.] § 262.40(a).
 - (b) The generator must give the transporter the remaining copies of the manifest.
144. Respondent did not routinely remove all of the product and propellant from the aerosol cans referred to in paragraphs 136-138, above, so that they were empty prior to offering them for transportation to an offsite disposal facility.
145. From October 2004 until the time of the EPA inspection on June 26, 2007, Respondent routinely offered the waste aerosol cans, referred to in paragraphs 136-138 and 144, above, for transportation off-site to a local municipal solid waste disposal facility without completing and distributing a hazardous waste manifest for such shipments.

146. By failing to complete and distribute hazardous waste manifests for the shipments of discarded aerosol cans from its Facility to the local municipal solid waste disposal facility, from October 2004 until June 26, 2007, Respondent violated 25 Pa. Code §§ 262a.10 and 262a.20(a)(1).

COUNT X

(Offering Hazardous Waste to Unpermitted Treatment, Storage, or Disposal Facility)

147. The allegations in paragraphs 1 through 146, above, are incorporated herein by reference as though fully set forth at length.
148. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.12(c), which provides that “[a] generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.”
149. From October 2004 until June 26, 2007, Respondent routinely offered its discarded aerosol cans to a solid waste transporter and a municipal solid waste disposal facility.
150. From October 2004 until June 26, 2007, neither the solid waste transporter nor the disposal facility referred to in paragraph 149, above, had an EPA identification number.
151. By offering its discarded aerosol cans, between October 2004 and June 26, 2007, to a transporter and a disposal facility that did not have EPA identification numbers, Respondent violated 25 Pa. Code § 262a.10.

COUNT XI

(Failure to Offer Universal Waste Only to Another Universal Waste Handler)

152. The allegations in paragraphs 1 through 151, above, are incorporated herein by reference as though fully set forth at length.
153. 25 Pa. Code § 266b.1 incorporates by reference 40 C.F.R. § 273.18(a), which provides, in relevant part, that “[a] small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.”
154. Since at least October 2004, Respondent has been a “small quantity handler of universal waste” and a “generator” of universal waste “lamps” as these terms are defined in 40 C.F.R. § 273.9.
155. Respondent discarded and sent offsite for disposal approximately the number of universal waste “lamps” indicated in the table below:

YEAR	2004	2005	2006	2007
METAL HALIDE LAMPS	9	9	7	16
FLUORESCENT LAMPS	25	141	25	54

156. From October 2004 until June 26, 2007, Respondent sent the "lamps" referred to in paragraph 155, above, to a place other than a "universal waste handler," a "destination facility," or a "foreign destination," as these terms are defined in 40 C.F.R. § 273.9.
157. By sending its discarded lamps to a party that was not a "universal waste handler," a "destination facility," or a "foreign destination" from October 2004 until June 26, 2007, Respondent violated 25 Pa. Code § 266b.1.

COUNT XII

(Failure to maintain LDR notifications)

158. The allegations in paragraphs 1 through 157, above, are incorporated herein by reference, as though fully set forth at length.
159. Pursuant to 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(1), "[a] generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40"
160. Hazardous wastes having Hazardous Waste Numbers D001, U149, F003, and U002, are prohibited from land disposal in accordance with 40 C.F.R. § 268.40.
161. Hazardous wastes generated at the Facility, as described in paragraphs 31 through 93, above, are prohibited from land disposal as provided in 40 C.F.R. § 268.40.
162. Between October 2004 and June 26, 2007, Respondent shipped land disposal restricted hazardous wastes, including D001, U149, F002, and U002, to a hazardous waste disposal facility on a monthly basis.
163. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a) (2001 ed.), provides, in relevant part:

(2) If the [hazardous] waste ... does not meet the treatment standard: [w]ith the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. ...

* * * *

(8) Generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal.

164. As a generator that shipped land disposal restricted hazardous waste, Respondent was required, pursuant to 25 Pa. Code § 268a.1, to retain on-site a copy of all notices, as described in paragraph 163, above, for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal facilities.
165. At the time of the June 26, 2007 EPA Inspection, Respondent was not retaining on-site any notice, in accordance with 40 C.F.R. § 268.7(a)(8), pertaining to its off-site shipments of land disposal restricted hazardous wastes that occurred prior to January 12, 2007.
166. By failing to retain on-site copies of notices, in accordance with 40 C.F.R. § 268.7(a)(8), pertaining to off-site shipments of land disposal restricted hazardous waste prior to January 12, 2007, Respondent violated 25 Pa. Code § 268a.1.

COUNT XIII

(Failure to Comply with LDR Storage Requirements)

167. The allegations in paragraphs 1 through 166, above, are incorporated herein by reference as though fully set forth at length.
168. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50 provides, in pertinent part with exceptions not relevant to this matter, that:
- (a) ... the storage of hazardous wastes restricted from land disposal under subpart C of [40 C.F.R. Part 268] ... is prohibited, unless the following conditions are met:
- (1) A generator stores such wastes in ... containers, ... and the generator complies with the requirements in [40 C.F.R.] § 262.34 and parts 264 and 265 ...
169. Pursuant to 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. §§ 268.9(c), .37, and .40, the hazardous wastes referred to in paragraphs 32, 35, 38, 41, 44, 49, 69, 72, 75, 78, 82, 84, 87, 92, and 136, above, are and were at the time of the violation alleged in this Count, prohibited from land disposal.
170. During the time when Respondent was storing the hazardous wastes referred to in paragraphs 32, 35, 38, 41, 44, 49, 69, 72, 75, 78, 82, 84, 87, 92, and 136, above, those wastes did not meet the treatment standards specified in 40 C.F.R. §§ 268.40 - .43, or the treatment standards specified under a variance issued pursuant to 40 C.F.R. § 268.44, nor were such wastes in compliance with applicable prohibitions specified in RCRA Section 3004, 42 U.S.C. § 6924.

171. As a generator of hazardous wastes that are prohibited from land disposal, Respondent has been prohibited from storing such wastes at the Facility since at least October 2004, unless it complied with the requirements in 40 C.F.R. § 262.34 and parts 264 and 265.
172. As described in paragraphs 55, 60, 66, 67, 90, 96, 103, 114, 117, 121, 124, 129, and 133, above, Respondent stored hazardous wastes that are restricted from land disposal without complying with the following requirements of 40 C.F.R. § 262.34 and parts 264 and 265:
- 1) clearly marking containers where visible for inspection with the date when hazardous waste accumulation began;
 - 2) labeling containers with the words "Hazardous Waste;"
 - 3) keeping containers closed in accordance with 40 C.F.R. §§ 264.173(a) and 265.173(a);
 - 4) providing a containment system for central hazardous waste accumulation areas in accordance with 40 C.F.R. § 264.175 and 25 Pa. Code §§ 265a.175(a) and 265a.179;
 - 5) conducting weekly inspections of hazardous waste storage areas, and preparing and maintaining records of such inspections, in accordance with 40 C.F.R. §§ 264.174 and .15, and 265.174; and
 - 6) providing and documenting a hazardous waste training program in accordance with 40 C.F.R. §§ 264.16 and 265.16.
173. Respondent's storage of land disposal restricted waste from October 2004 to June 26, 2007 without complying with the requirements of 40 C.F.R. § 262.34 and parts 264 and 265 as described in paragraph 172, above, is a violation of 25 Pa. Code § 268a.1.

Civil Penalty

174. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this CA, Respondent consents to the assessment of a civil penalty in the amount of Sixty-Five Thousand Dollars (\$65,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a fully executed copy of this CAFO. Interest, administrative costs, and late payment penalties will be assessed as explained below for any portion of the civil penalty not paid by Respondent within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
175. The aforesaid civil penalty is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of the violations and good faith efforts of the Respondent to comply, as provided for in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *RCRA Civil Penalty Policy* (June 2003) to determine the amount set forth in paragraph 174, above.
176. The civil penalty of Sixty-Five Thousand Dollars (\$65,000.00) assessed in paragraph 174, above, shall be paid in six (6) installments with interest at the rate of three percent (3%) per annum on the outstanding principal balance in accordance with the following schedule:
- a. 1st Payment: The first payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$11,000.00 and

an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

- b. 2nd Payment: The second payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$10,733.70 and an interest payment of \$266.30, shall be paid within sixty (60) days on which this CAFO is mailed or hand-delivered to Respondent;
- c. 3rd Payment: The third payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$10,893.32 and an interest payment of \$106.68, shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- d. 4th Payment: The fourth payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$10,920.18 and an interest payment of \$79.82, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- e. 5th Payment: The fifth payment in the amount of Eleven Thousand Dollars (\$11,000.00), consisting of a principal payment of \$10,947.10 and an interest payment of \$52.90, shall be paid within one hundred and fifty (150) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- f. 6th Payment: The sixth payment in the amount of Ten Thousand Five Hundred Thirty-One Dollars and Sixty Cents (\$10,531.60), consisting of a principal payment of \$10,505.70 and an interest payment of \$25.90, shall be paid within one hundred and eighty (180) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of Sixty-Five Thousand Dollars (\$65,000.00) and total interest payments in the amount of Five Hundred Thirty-One Dollars and Sixty Cents (\$531.60).

- 177. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in paragraph 176, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, administrative handling charges and late payment penalty charges as described in paragraphs 182 and 183, below, in the event of any such failure or default.
- 178. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth in paragraph 176, above, Respondent may pay the

entire civil penalty of Sixty-Five Thousand Dollars (\$65,000.00) within thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a) as described in paragraph 181, below. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

179. Respondent shall remit each installment payment for the civil penalty and interest, pursuant to paragraph 176, above, and/or the full penalty pursuant to paragraphs 177 or 178, above, and/or any administrative fees and late payment penalties, by cashier's check, certified check or electronic wire transfer, in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2010-0001;
- B. All checks shall be made payable to "United States Treasury";
- C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck 513-487-2105

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking.

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid 202-874-7026 OR REX, 1-866-234-5681

- G. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- I. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

John Ruggero
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

180. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
181. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
182. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
183. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
184. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this CAFO.

Other Applicable Laws

185. Nothing in this CAFO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable Federal, State or local laws or regulations.

Reservation of Rights

186. This CAFO resolves only EPA's claims for civil penalties for the specific violations of RCRA Subtitle C which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO.

Scope of Settlement

187. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

188. This CAFO shall apply to and be binding upon EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. By his/her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this CAFO.

Effective Date

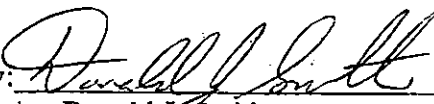
189. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or the Administrator's designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

190. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

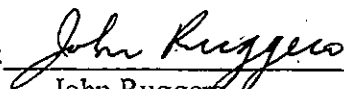
For Respondent:

Date: 10/16/09

By: 
Donald J. Smith
Combined Systems, Inc.


For Complainant:

Date: 10/26/09

By: 
John Ruggero
Senior Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommends that the Regional Administrator of the U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 11/9/09

By: 
Abraham Ferdas, Director
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

In the Matter of:

Combined Systems, Inc.
98 Cuttermill Road, Ste 231
Great Neck, NY 11021

Respondent

Combined Systems, Inc. and
Combined Tactical Systems, Inc.
388 Kinsman Road
Jamestown, PA 16134

Facility

Docket No. RCRA-03-2010-0001

FINAL ORDER

Proceeding under Section 3008(a) and (g)
of the Resource Conservation and
Recovery Act, as amended, 42 U.S.C.
§ 6928(a) and (g)

REGIONAL HEARING CLERK
EPA REGION III, PHILADELPHIA, PA

2009 NOV 24 PM 4:38

RECEIVED

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Combined Systems, Inc., have executed a document entitled "Consent Agreement" which I ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are incorporated herein by reference.

NOW, THEREFORE, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), and based upon the representations of the parties set forth in the Consent Agreement that the civil penalty amount agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), **IT IS HEREBY ORDERED THAT** Respondent shall pay a civil penalty in the amount of Sixty-Five Thousand Dollars (\$65,000.00), as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 11/24/09

By: Renée Sarajian
Renée Sarajian
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, I hand-delivered to the Regional Hearing Clerk, EPA Region III the original CONSENT AGREEMENT AND FINAL ORDER (CAFO) in *In the Matter of: Combined Systems, Inc.*, Docket No. RCRA-03-2010-0001, and the original memo from Ms. Marcia Mulkey and Mr. Abraham Ferdas transmitting the CAFO to the Regional Judicial Officer (RJO). In addition, I sent, to the following individual via the manner specified below, a true and correct copy of the CAFO with original signatures and a true and correct copy of the transmittal memo to the RJO:

FEDEX
OVERNIGHT DELIVERY:

Danielle E. Mettler, Esq.
Hiscock & Barclay LLP
2000 HSBC Plaza
100 Chestnut Street
Rochester, NY 14604

RECEIVED
REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

2009 NOV 24 PM 4:38

Nov. 24, 2009
Date


John Ruggiero
Senior Assistant Regional Counsel
EPA Region III (3RC30)
1650 Arch St.
Philadelphia, PA 19103-2029
215-814-2142

CASE AND FACILITY BACKGROUND

Regional Hearing Clerk Docket Number RCRA-03-2010-0001
Respondent(s) or Defendant(s) (Enforcement Action) Name COMBINED SYSTEMS, Inc.
Facility Name(s) COMBINED SYSTEMS INC. (COMBINED TACTICAL SYSTEMS, INC.)
Facility Address: (No P.O. Box) Street: 388 KILNSMAN ROAD City: JAMESTOWN County: _____ St: PA Zip: 16134
a) Primary 4-digit SIC-code(s) 3483 Federal Facility? Circle one: Yes (No)
a) EPA Lead Attorney JOHN RUGGERO (3RC30) (b) EPA Technical Contact Deanna R. Henry (3LC70)

Violation Type- (section of statute that authorizes pursuit of penalty and/or injunctive relief) (check ones that apply):

RCRA 3008A (AO for Compliance and/or Penalty - Sub C) _____ RCRA 7003 (AO for Imminent Hazard) _____
RCRA 3008H (AO for Corrective Action) _____ RCRA 9006 (AO for Compliance and/or Penalty - UST) _____
RCRA 3013 (AO for Compliance) _____ RCRA 9006FC (Field Citation - UST) _____

RCRA Section(s) and Subsection(s) violated (check the ones that apply):

RCRA 3002 (Large Quantity Generator) _____ RCRA 3013 (Generators - Monitoring, Analysis, Testing) _____
RCRA 3002 (Small Quantity Generator) _____ RCRA 3013 (TSD - Monitoring, Analysis, Testing) _____
RCRA 3002 (Conditionally Exempt Small Quantity Generator) _____ RCRA 3013 (Transporters - Monitoring, Analysis, Testing) _____
RCRA 3003 (Transporter) _____ RCRA 7003 (Solid Waste - Imminent and Substantial Endangerment) _____
RCRA 3003 (Transfer Station) _____ RCRA 7003 (Hazardous Waste - Imminent and Substantial Endangerment) _____
RCRA 3004 (Interim) _____ RCRA 9003 (Corrective Action) _____
RCRA 3004 (Permitted) _____ RCRA 9003 (Corrective Petroleum Waste) _____
RCRA 3004VU (TSD Corrective Action) _____ RCRA 9003 (Regulatory Hazardous Substance) _____
RCRA 3008H (Interim Status Corrective Action Order) _____ RCRA 9003 (Regulatory Petroleum - UST) _____
RCRA 9005 (Inspections, Monitoring, Testing, Corrective Actions - Info Gathering) _____

Settlement Action Type and Date (check the one that applies):

40 CFR Part 22 settlement:

Type of Action:

i. _____ CAFO _____ (date clocked in with Regional Hearing Clerk)
ii. X SuperCAFO (under 40 CFR Sec. 22.13(b) authority) 11/24/09 (date clocked in with Regional Hearing Clerk)
iii. _____ Final Order (under Quick Resolution, 40 CFR 22.18(a)(3)) _____ (date clocked in with Regional Hearing Clerk)
iv. _____ Expedited Settlement Agreement (use for Field Citations) _____ (date clocked in with Regional Hearing Clerk)
a) _____ Administrative Orders or Administrative Compliance Orders _____ (date signed by DD or RA)
b) _____ Notice of Determination (NOD) or Notice of Non-Compliance (NON) _____ (date signed by Chief or RA)
c) _____ Consent Decree Resolving a Civil Judicial Action- C D to be Lodged _____ (date signed by RA)
d) _____ Consent Decree or Court Order Resolving a Civil Judicial Action _____ (date filed/entered by the Court)

List names of all Respondent(s)/Defendant(s). List names (if different) of the Facilities (where the violation(s) occurred). Indicate which are a Small business (<100 employees) by placing an "SB" designation after the name. Attach additional sheets as necessary.

0. SECTION NOT BEING UTILIZED.

1. Was the Agency activity taken in response to Environmental Justice concerns? Circle one: Yes (No) If yes, check option(s) below:
_____ Low Income _____ Minority Population & Low Income _____ Minority Population _____ Other _____

2. Was Alternative Dispute Resolution used in this action? Circle one: Yes / No

3. CORE PRIORITY Circle one: (Yes) No If "No", one of the priorities below in blocks C or D must be Yes

4. NATIONAL ENFORCEMENT PRIORITY ACTIVITY Circle one: Yes / (No) If Yes, check option(s) below:

_____ Mineral Processing _____ Financial Assurance

5. REGIONAL PRIORITY Circle one: Yes / (No) If Yes, check option(s) below:

_____ Integrated Strategies _____ RCRA I District of Columbia
_____ RCRA Foundries _____ RCRA Municipalities
_____ Federal Facility Labs

E. PENALTY (if there is no penalty, enter 0)

13. Federal Penalty Required \$ 65,000.00

14. (if shared) Federal Share \$ _____

15. (if shared) State or local Share \$ _____

16. NOT BEING UTILIZED

F. 17. THIS SECTION NOT BEING UTILIZED

I. INJUNCTIVE RELIEF/COMPLIANCE ACTIONS (Non-SEP)

8. What action did Respondent/Defendant take prior to receipt of settlement/order or will take to return to compliance or meet addl. requirements (other than that has already been reported on the Inspection Conclusion Data Sheet (ICDS). The Region can take credit for pollutant reductions which result from the agency's enforcement even though the action being reported on this form does not specifically require such reductions. Where separate penalty and/or compliance orders are issued regarding same violation(s), report the following information for only one of those orders. Select response(s) from the following:

Actions with Direct Environmental Benefits and/or Direct Response/Corrective Action (check all that apply)	Pollutant	Quantitative Environmental Impact		
		Annual Amount	Unit	Impacted Media
<input type="checkbox"/> Waste Minimization (RCRA)	<input type="checkbox"/> Haz Waste		<input type="checkbox"/> Yards	<input type="checkbox"/> Land
<input type="checkbox"/> Waste Treatment (RCRA)	<input type="checkbox"/> Gasoline		<input type="checkbox"/> Pounds	<input type="checkbox"/> Air
<input type="checkbox"/> Containment (Corrective Action)	<input type="checkbox"/> Used Oil		<input type="checkbox"/> Soil	<input type="checkbox"/> Ground Water
<input type="checkbox"/> In-situ or Ex-situ Treatment (Corrective Action)	<input type="checkbox"/> Contam. Soil			<input type="checkbox"/> Surface Water
<input type="checkbox"/> Removal of Contaminated Medium (Corrective Action, RCRA, or UST)				
Cost of Direct actions described above \$				

What, if any, preventative actions to reduce the likelihood of future releases did Respondent/Defendant take to return to compliance or meet additional requirements?

Preventative Actions to Reduce the Likelihood of Future Releases (check all that apply)	Pollutant	Quantitative Environmental Impact		
		Annual Amount	Unit	Impacted Media
<input checked="" type="checkbox"/> Storage Change (RCRA)	<input checked="" type="checkbox"/> Haz Waste	3,650	<input checked="" type="checkbox"/> Gallons	<input checked="" type="checkbox"/> Land
<input type="checkbox"/> Disposal Change (RCRA)	<input type="checkbox"/> Gasoline	365	<input checked="" type="checkbox"/> Yards	<input type="checkbox"/> Air
<input type="checkbox"/> Secondary Containment (RCRA)	<input type="checkbox"/> Used Oil	7,640		<input type="checkbox"/> Ground water
<input checked="" type="checkbox"/> Labeling/Manifesting (RCRA)	<input type="checkbox"/> Contam. Soil			<input type="checkbox"/> Surface water
<input type="checkbox"/> Waste Identification (RCRA)				
<input type="checkbox"/> Secondary Containment (UST)				
<input type="checkbox"/> Tank Closure (UST)				
<input type="checkbox"/> Corrosion or Overfill Installation (UST)				
Cost of preventative actions described above \$ 1,000				

What, if any, facility or site management and information practices did Respondent/Defendant take to return to compliance or meet additional requirements?

Facility/Site Management or Information Practices (check all that apply)			
<input type="checkbox"/> Auditing	<input type="checkbox"/> Monitoring	<input type="checkbox"/> Spill Notification	<input type="checkbox"/> Notification
<input type="checkbox"/> Environmental Management Review	<input type="checkbox"/> Permit Application	<input type="checkbox"/> Testing/Sampling	
<input type="checkbox"/> Financial Responsibility Requirement	<input type="checkbox"/> Planning	<input checked="" type="checkbox"/> Training	
<input checked="" type="checkbox"/> Information Letter Response	<input checked="" type="checkbox"/> Recordkeeping	<input type="checkbox"/> UST Release Detection	
<input checked="" type="checkbox"/> Labeling/Manifesting	<input type="checkbox"/> Reporting	<input checked="" type="checkbox"/> Work Practices	
Cost of Management/Practices actions described above \$ 1,000			

(No Quantitative Environmental Impact required for this section.)

H. COMPLETE THIS SECTION FOR ADMINISTRATIVE COMPLIANCE ORDERS ONLY

Violation Type(s): ERK RCRPE REC (Additional violations on back or blank sheet)

Pollutant(s): D001 F003 U149 (Additional pollutants on back or blank sheet)

Relief Sought: ☒ Penalty ☐ Injunctive

CFR Violation Citation(s): 40 CFR 270.1 40 CFR 269.173 40 CFR 264.174 264.16 264.15 264.175 268.50

Case Summary (A summary of the violation(s), environmental problem(s), and a description of the cause(s) of action/basis of legal action)

HW Storage w/out a RCRA permit. Failure to keep containers of
HW closed. Failure to train employees having HW management responsibilities.
Failure to keep records of facility weekly inspections of storage areas.
Failure to make a waste determination. Failure to properly manifest HW.
Offering HW to a facility that did not have a permit.
Offering universal waste to a facility that was not a proper handler
of such waste. Failure to keep LDR notifications. Violation of LDR
storage requirements.

- (a) Public Health
- (b) Pollution Prevention (Complete Q. 20)
 - (1) equipment/technology modifications
 - (2) process/procedure modification
 - (3) product reformulation/redesign
 - (4) raw materials substitution
 - (5) improved housekeeping/O&M/training/inventory-control
 - (6) in-process recycling
 - (7) energy efficiency/conservation
- (c) Pollution Reduction (Complete Q. 20)
- (d) Environmental Restoration and Protection
- (e) Assessments and Audits
- (f) Environmental Compliance Promotion
- (g) Emergency Planning and Preparedness
- (h) Other Program SEP category (specify)

1. SEP description

2. Is Environmental Justice addressed by impact of SEP? Circle one: Yes / No
3. SEP Quantitative environmental pollutants and/or chemicals and/or waste-streams, amount of reductions/eliminations (e.g., emissions/discharges). Please relate the applicable media and units.

Pollutant/Chemical/Waste Stream	Annual Amount	Units	Potentially Impacted Media
		Pounds	Land
		Pounds/year	Ground water
		Gallons/year	Surface water
		People	Wetlands
		Acres	Wastewater to POTW
		Linear feet (small stream)	Air
		Linear feet (medium stream)	Animals/Plants/Humans
		Linear feed (large stream)	Buildings/Houses/Schools

SELF-DISCLOSURE Circle one: Yes / No (If "No", proceed to completing the Concurrences)

- 3. Date Violation Disclosed:
- 4. Comments:
- 5. Disclosure under Audit Policy? Circle one: Yes / No (If "Yes", you should NOT enter information in the SBREFA or Small Business fields)
- 6. Disclosure under EPA's Small Business Policy (<100 employees)? Circle one: Yes / No
- 7. Disclosure Received by an Office other than OECEJ? Circle one: Yes / No If "Yes", Office:
- 8. Disclosure Part of Compliance Incentive Program Listing? Circle one: Yes / No If "Yes", check option(s) below:
 - [] Bakers CFC Partnership Program [] CMOM POTW Program [] Colleges & Universities Program [] Grain Processing Program
 - [] Industrial Organic Chemical Program [] Lead Disclosure Program [] National Iron & Steel Incentive Program
 - [] Oil & Gas Program [] Prisons Program [] Storage Tank Emission Reduction Partnership Program
 - [] Stormwater/Commercial Development Program [] Telecommunications Incentive Program [] Wood Treating Program
- 9. Outstanding Issues? (Y/N) If yes, please describe:
- 10. Penalty Information for Audit Policy Cases only: (All fields required for Audit Policy)
 - a) Penalty Calculation Before Mitigation: \$ (c) Gravity Based Penalty Assessed: \$
 - b) Gravity Based Penalty Waived: % and \$ (d) Economic Benefit Assessed: \$
- 11. Rationale for Not Applying Disclosure Policy (Use only if 30(b) and 30(c) above are zero)
 - Actual Serious Harm or Imminent & Substantial Endangerment
 - Cooperation Insufficient
 - Disclosure Not Prompt
 - Discovery and Disclosure Not Independent
 - Federal Facility That Would Not Be Liable for a Penalty
 - Not a Systematic Discovery
 - Agreement or Order Violated
 - Deferred to the State
 - Disclosure Not Voluntary
 - Entity Had Repeat Violations
 - No Violation(s) Occurred
 - Violation(s) Not Corrected Expeditiously

CONCURRENCES							
SYMBOL	3LC70	3RC00	3LC70	3RC00	3LC00	3RC00	
SURNAME	Program Staff	Ruggano	Amend	Coe	Ferdas	Early	
DATE	11/9/09	10/26/09		Coe 11/2/09			

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: John Rygers
Name of Contact person

Nov 24, 2009

10/26/09

Date

in the EPA Region 3, ORC
Office

at

~~858 256 5659~~

Phone number 215 814 2142

☐ Non-SF Jud. Order/Consent
Decree. DOJ COLLECTS

☒ Administrative Order/
Consent Agreement
FMD COLLECTS PAYMENT

☐ SF Jud. Order/Consent
Decree. FMD COLLECTS

☒ This is an original debt

☐ This is a modification

Name of Person and/or Company/Municipality making the payment

COMBINED SYSTEMS, INC.

The Total Dollar Amount of Receivable \$ 65,000 See CAFD for installment schedule

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2010-001

The Site-Specific Superfund Acct. Number

The Designated Regional/HQ Program Office LAND AND Chemical Division, Region 3

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number

If you have any questions call:

Name of Contact

Date

in the Financial Management Office, phone number:

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005

2. Originating Office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating Office
3. Regional Hearing Clerk

2. Designated Program Office
3. Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

John Ruggero
Senior Assistant Regional Counsel

Mail Code: 3RC30
Phone: (215) 814-2142
Facsimile: (215) 814-2603

October 9, 2009

OVERNIGHT DELIVERY

Danielle E. Mettler, Esq.
Hiscock & Barclay
One Park Place
300 South State Street
Syracuse, New York 13202

Confidential - For Settlement Discussions Only

Re: *In the Matter of: Combined Systems, Inc.*
EPA Docket No. RCRA-03-2010-0001

Dear Ms. Mettler:

Enclosed for Respondent's signature is the Consent Agreement and Final Order ("CAFO") to resolve alleged violations of the Resource Conservation and Recovery Act at Combined Systems, Inc.'s facility in Jamestown, Pennsylvania. The proposed CAFO will assess a penalty for the violations alleged therein. The enclosed agreement is intended to be consistent with our prior discussions. Compared to the last draft which I provided electronically on September 27, the final Consent Agreement includes a minor change to clarify paragraph 132, the correct name of the CSI official who will sign the Consent Agreement, and a new docket number.

Although I anticipate that U.S. EPA - Region III management and the Regional Judicial Officer will approve the Consent Agreement and Final Order ("CAFO") as currently drafted, please bear in mind that the terms of the settlement are not approved until these officials have executed the documents. Please return the original Consent Agreement signed by Respondent's representative as soon as possible. Also, please notify me by e-mail when it has been mailed so we will be aware if there are any problems with its delivery. When I receive the signed Consent Agreement, I will sign and forward it, along with a recommendation for its approval, to the EPA official designated to approve this Consent Agreement. After his approval, the CAFO will be forwarded, along with a recommendation for its approval, to the Regional Judicial Officer or Regional Administrator for signature. Upon final execution, I will file the CAFO with the Regional Hearing Clerk and send a copy to you.

Thank you for your cooperation and continued attention to the tasks remaining to resolve this matter. Please do not hesitate to contact me to discuss any issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Ruggero".

John Ruggero

Enclosure

cc: Ms. J. Henry (3LC70)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

John Ruggero
Senior Assistant Regional Counsel

Mail Code: 3RC30
Phone: (215)814-2142
Facsimile: (215)814-2603

July 15, 2009

VIA E-MAIL AND
FIRST CLASS MAIL

Michael A. Oropallo, Esq.
Hiscock & Barclay
One Park Place
300 South State Street
Syracuse, New York 13202

Confidential - For Settlement Discussions Only

Re: *In the Matter of: Combined Systems, Inc.*
EPA Docket No. RCRA-03-2009-0036

Dear Mr. Oropallo:

Thank you for your letter dated May 8, 2009 regarding the liability issues and penalty analysis pertaining to the alleged violations of RCRA at Combined Systems, Inc.'s ("CSI") Facility in Jamestown, Pa. I apologize for the delay in responding to your letter. EPA Region III has carefully considered CSI's arguments regarding liability and penalty reductions in the context of our efforts to reach a settlement in this matter. This response provides a revised penalty proposal for settlement purposes and explains Region III's perspective regarding the issues. For convenience, the following responses to the issues are in the same sequence as they appear in your letter.

Multiple Penalties

CSI argues that the penalties proposed by Region III for Counts II-VI should be compressed with the penalty for Count I because the former violations are not independent or substantially distinguishable from the allegations of Count I. For the reasons explained below, Region III believes that the separate penalties proposed for Counts I and II-VI are consistent with the RCRA Civil Penalty Policy (June 2003) ("Penalty Policy") and are appropriate for the alleged violations.

As indicated in your letter, the acts and omissions which constitute the violations at issue in Counts II-VI are also pled in Count I. The acts and omissions alleged in Counts I-VI constitute the bases for CSI's failure to qualify for an exemption from the permitting requirements with which CSI failed to comply. It is CSI's failure to comply with permitting requirements of RCRA (*i.e.*, storing hazardous waste without a RCRA permit or interim status)

that is the violation alleged in Count I (and not the failure to qualify for an exemption). The acts and omissions alleged in Count I that are realleged in Counts II-VI were not considered by Region III for purposes of determining the penalty proposed for Count I.

Thus, the penalty proposed by Region III for Count I is not based on all six of the independent acts or omissions cited in Count I. While each of those acts or omissions disqualified CSI from the exemption from the permit requirement under RCRA, the penalty proposed for Count I is based on three principal factors: 1) CSI's longstanding practice of failing to mark the date when accumulation of hazardous waste began on each container, 2) CSI's failure to mark numerous containers with the words "Hazardous Waste," and 3) CSI's storage of hazardous waste without a RCRA permit or interim status.

The first omission potentially interfered with the ability of EPA and state inspectors and CSI's employees to verify compliance with the 90-day limit on hazardous waste accumulations at the Facility for an extended period of time. The second omission increased the risk of mismanagement of hazardous wastes accumulated in numerous containers in multiple locations at the Facility. Regarding the third factor, Region III views the failure to have a permit to be a separate harm to the integrity of the hazardous waste management program because facilities that do not have a permit or interim status and that do not comply with the conditions for exemption from the permit undermine the fundamental regulatory scheme by avoiding the more stringent standards, *e.g.*, closure plan and corrective action requirements, applicable to permitted treatment, storage and disposal ("TSD") facilities set forth in 40 C.F.R. Part 264. Such facilities gain a competitive advantage over companies that do invest the resources necessary either to fully comply with the conditions to qualify for the exemption or to obtain and comply with a RCRA permit.

The storage of hazardous waste without a permit, failure to place the date when accumulation of hazardous waste began on a container, and failure to label a container with the words "Hazardous Waste" are completely independent and distinct from the violations alleged in Counts II-VI. The obligation to have a permit or to comply with the conditions for exemption from the permit requirement is completely independent of the standards applicable to the operation of a TSD facility. For example, a generator who accumulates hazardous waste could violate any of the three requirements enumerated above without violating any of the requirements cited in Counts II-VI. Furthermore, a permitted facility would be liable for separate penalties for each of the acts or omissions cited in Counts II-VI despite its compliance with the basic requirement to have a permit. For these reasons, it would be illogical and unfair to allow an unpermitted facility to avoid penalties for its failure to comply with the requirements cited in Counts II-VI, when a permitted facility would incur penalty liability for each violation of those requirements.

The failure to keep a container closed and the failure to perform weekly inspections present separate and cumulative, rather than coincident, risks of harm that are also distinguishable from the facility's statutory obligation to obtain a permit or interim status to store

hazardous waste. Indeed, the failures to keep a container closed, to conduct weekly inspections, to train employees, and to document the training program are independent omissions with no logical connection to the requirement to mark a container with a date or the words "Hazardous Waste." Each requirement is designed either to prevent a separate risk of harm to health and the environment or to enable regulatory agencies to monitor compliance with the regulations. However, each omission has the potential to cause a separate harm to the environment or to the integrity of the hazardous waste regulatory program and is a unique element of the violations alleged in Counts II-VI. Because the potential for harm is cumulative, the assessment of separate and additive penalties is consistent with the graduated penalty system incorporated into the Penalty Policy. For these reasons, Region III views the assessment of separate penalties for each of the distinguishable violations to be reasonable. Thus, Region III believes that a separate penalty is appropriate for each of the independent and discrete violations cited in Counts I through VI, with the exception of Count VI, for which the penalty was compressed with the penalty for Count III.

In response to CSI's argument that Count VII resulted from a "chain reaction" stemming from Count I, please note that the authorized Pennsylvania hazardous waste management program requires secondary containment for storage units owned or operated by generators. See 25 Pa. Code §§ 260a.3(b) and 265a.179. Therefore, the requirement is independent of the requirement to have a RCRA permit or to comply with the conditions for exemption from the permit requirement. In other words, the secondary containment requirement has always applied to CSI's container A-4 and the violation was not dependent on any other violation alleged in the proposed CAFO. If CSI prefers, Region III can redraft this Count to clarify that the violation is based on a rule that is wholly independent of the permit violation. Regarding Count XIII, please note that the penalty summary provided by Region III on March 10, 2009 indicates that the penalty for Count XIII was compressed with the penalty for Count I. Finally, please note that Region III did not pursue the full range of potential "chain reaction" violations flowing from Count I, such as the failure to have a closure plan and the failure to have financial assurance.

Regarding CSI's additional argument that the penalty should be reduced because of CSI's corrective measures following the inspection, please note that "no downward adjustment should be made if the good faith efforts to comply primarily consist of coming into compliance. ... EPA will also apply a presumption against downward adjustment for respondent's efforts to comply or otherwise correct violations after the Agency's detection of violations ... since the amount set in the gravity-based penalty component matrix assumes good faith efforts by a respondent to comply after EPA['s] discovery of a violation." Penalty Policy at 36.

Multi-day Penalties

An assessment of multi-day and per day penalties is consistent with the Penalty Policy. The violations in Counts I, XIII, III, and VI recurred over extended periods of time. The multi-day penalty accounts for the fact that the risk to the environment and human health from such violations increases proportionally with their duration. Region III believes that it would therefore be inappropriate to apply the same penalty for a 3-year violation as for a one-day violation. Thus,

Region III believes that its characterization of the multi-day violations alleged in Counts I and XIII as a "minor potential for harm" and "moderate extent of deviation" from the requirements is justified. Region III's characterization of those violations results in the relatively modest penalty proposed by Region III for the extended period of the violations. Similarly, the violations alleged in Counts III and VI recurred over an extended period of time, thereby increasing the risk that a potential problem in a hazardous waste storage unit would remain undetected and uncorrected for days or weeks. Accordingly, Region III is retaining the multi-day penalty assessment but has selected the penalty from the lower end of the penalty range specified in the Penalty Policy matrix cell that corresponds to Region III's categorization of the violations. This change reduces the proposed penalty for those two Counts by a total of \$1,869.00.

Regarding the per day penalty proposed for Count IV, Region III took into account that the employee training requirement was violated twice. Clearly, CSI's inattention to training was a factor that contributed to some of its other violations. Again, fairness requires that the penalty be proportional to the number of times a requirement is violated. Consequently, Region III does not agree with CSI's proposal for reducing the per day penalties for Count IV.

Penalty Range and Adjustment Factors

After reviewing the general factors argued in your letter and the facts and circumstances of Counts VIII, IX, and X, Region III is agreeing to reduce the penalty for each Count by \$1,000. As shown in the enclosed penalty summary, the above adjustments have reduced the total gravity penalty for the alleged violations to \$95,757. In the interest of resolving this matter promptly through this informal settlement negotiation, Region III will reduce that amount by 20 percent in recognition of CSI's cooperative attitude during and after the inspection (10% reduction) and for its good faith efforts to comply with RCRA prior to the inspection (10% reduction), resulting in a final penalty of \$76,600.

Ability-to-Pay the Penalty

CSI also proposed that Region III agree to waive a portion of the final penalty because of financial hardship. Region III will reduce a penalty based on a respondent's inability to pay an assessed penalty only if the inability-to-pay claim is supported by comprehensive financial information that substantiates the claim. If CSI wishes to assert such a claim formally, it will need to provide additional information that is described on a comprehensive questionnaire which I will provide if CSI so requests. Region III will have CSI's financial information reviewed by a financial analyst to determine if the claim is adequately justified. In addition to a completed questionnaire, Region III will request CSI to provide the documents described below relating to CSI's financial condition for Region III's evaluation.

Signed copies of CSI's federal income tax returns (*i.e.*, either federal form 1040 or federal form 1120), including all related schedules and attachments for 2004 through 2008. If CSI files a consolidated return with a related company, it must also provide signed copies of the consolidated returns, including all related

schedules and attachments for 2004 through 2008.

Copies of CSI's audited financial statements, including any income statement, balance sheet, statement of cash flows, and all related attachments and footnotes for the 5 most recent fiscal years. If audited statements are not available, unaudited statements must be provided. If financial statements are not available, a copy of CSI's operating statements for the 5 most recent fiscal years, including an accounting of the company's revenue streams and detailed list of selling, general, and administrative expenses by year must be provided.

An itemized accounting of all inter-company transactions (*e.g.*, fees, product sales, asset transfers, loans, etc.) among CSI, and all other related entities such as other sister and parent companies and their officers and directors for the 5 most recent fiscal years.

An itemized accounting of the total compensation paid to senior managers, executives, and officers of CSI by individual in the last 5 years, and the compensation paid to each individual for fiscal year 2008.

Additional information regarding EPA's evaluation of inability-to-pay claims can be obtained at the following web site: <http://www.epa.gov/Compliance/civil/econmodels/>.

Business Confidentiality Claims

If CSI decides to submit financial information for Region III's evaluation, CSI will be entitled to assert a claim of business confidentiality covering any part or all of the information it submits, in the manner described in 40 C.F.R. Section 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If a claim of business confidentiality is not asserted when the information is submitted to EPA, EPA may make this information available to the public without further notice to CSI. CSI must clearly mark such claimed information by, either stamping or using any other such form of notice that such information is a trade secret, proprietary, or company confidential. To best ensure that CSI's intent is clear, we recommend that it mark as confidential each page containing such claimed information.

Region III has been diligent in its efforts to evaluate the issues raised in your letter and has applied the Penalty Policy liberally in determining the appropriate penalty to resolve the claims for penalties for the alleged violations we have discussed. Please let me know whether CSI agrees to pay the above penalty to settle the violations.

Region III appreciates your efforts to identify and explain CSI's position on the liability and penalty issues in this matter. Please contact me if you wish to schedule another conference call or meeting to discuss any aspect of the alleged violations or proposed penalty. I look forward to receiving your response to this settlement proposal within 2 weeks.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Ruggero".

John Ruggero

Enclosure

cc: Ms. Jeanna R. Henry (3LC70)

Revised 7/15/2009

**U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103**

Summary of Counts and Associated Penalties for Settlement Purposes Only:

**Combined Systems, Inc.
388 Kinsman Road
Jamestown, PA 16134
EPA ID No. PAR000039875**

**Total Penalty = \$95,757
Settlement Penalty = \$76,600**

Summary of Violations				
Count	Penalty Category	Original Penalty Amount	For Settlement Purposes Only	Revised Total Penalty Amount
Counts I & XIII Operating w/out a Permit or Interim Status. Failure to comply with LDR storage requirements.	Moderate/ Moderate Multi-Day = 179 Days @ \$150 per Day (Minor/Mod.) *Period of Non-Compliance from March 2004 to June 2007	\$8,000 \$150 x 179 \$ 26,850	No change to proposed penalty amount for Counts I & XIII.	\$34,850
Count II Open Container of Hazardous Waste	Minor/Minor	\$500	No change to proposed penalty amount for Count II.	\$500
Counts III & VI Failure to Conduct and Keep Records of Weekly Inspections of Hazardous Waste Storage Areas	Minor/Moderate Multi-Day = 156 Weeks @ \$129 per Week	\$1,000 \$20,124	Multi-day penalty retained. Penalties selected from lower end of range for minor/moderate matrix cell.	\$21,124 (*Reduced from \$22,993)
Count IV Failure to Provide Annual Hazardous Waste Training	Moderate/Moderate *Period of Non-Compliance for Calendar Years 2004 & 2006.	\$8,300 x 2 Years	No change to proposed penalty amount for Count IV.	\$16,600
Count V Failure to Prepare and Maintain Hazardous Waste Training Plan and Records	Minor/Major	\$2,000	No change to proposed penalty amount for Count V.	\$2,000
			No change to proposed	\$1,933

Summary of Violations				
Count VII Failure to Provide a Containment System for Hazardous Waste Storage Area	Minor/Moderate	\$1,933	penalty amount for Count VII.	
Count VIII Failure to Make a Waste Determination	Minor/Major	\$3,000	Reduce proposed penalty for Count VIII from \$3,000 to \$2,000.	\$2,000 (*Reduced from \$3,000)
Count IX Failure to Properly Manifest Off-Site Shipments of Hazardous Waste	Minor/Major	\$3,000	Reduce proposed penalty for Count IX from \$3,000 to \$2,000.	\$2,000 (*Reduced from \$3,000)
Count X Failure to Offer Hazardous Waste to a Permitted TSD Facility	Minor/Major	\$3,000	Reduce proposed penalty for Count X from \$3,000 to \$2,000.	\$2,000 (*Reduced from \$3,000)
Count XI Failure to Offer Universal Waste to Another Universal Waste Handler	Moderate/Major	\$12,250	No change to proposed penalty amount for Count XI.	\$12,250
Count XII Failure to Maintain LDR Notifications	Minor/Minor	\$500	No change to proposed penalty amount for Count XII.	\$500

Revised Penalty for Counts I- XIII = \$95,757

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May 8, 2009

FOR SETTLEMENT PURPOSES ONLY

John Ruggero, Esq.
United States Environmental
Protection Agency
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Re: Matter of Combined Systems, Inc.
EPA Docket No. RCRA-03-2009-0036

Dear Mr. Ruggero:

Please accept this letter as Combined Systems, Inc.'s ("CSI") response to your letter and proposed Consent Agreement and Final Order ("CAFO") dated March 10, 2009. As discussed during our conference call on April 24, 2009, this response provides an explanation of the reasons that CSI believes a reduction in penalty amounts is appropriate, the applicable mitigating factors and our suggested reduction to the proposed penalty. In order to justify the proposed reduction, we have specifically referenced EPA's RCRA Penalty Policy and applied the facts as we understand to the alleged violations referenced in your March 10, 2009 letter.

Multiple Penalties: Compression of Penalties

According to the EPA RCRA Penalty Policy (the "Penalty Policy"), in situations where multiple violations are alleged at a facility where such violations are not independent or substantially distinguishable, compression of the penalties into a single penalty is appropriate and recommended. See Penalty Policy at p. 21. Where violations are not independent and/or are not substantially distinguishable, EPA enforcement personnel has the discretion to view the penalties as posing a single legal risk and to therefore compress them into one. *Id.* Based on the Penalty Policy, CSI believes that Count I and Counts II-VI should be compressed because the underlying allegations in Count I and Counts II-VI are not substantially distinguishable from each other.

Specifically, Count I of the draft CAFO alleges, based upon six enumerated factors, that CSI should have had a RCRA permit or claimed interim status because it failed to meet certain conditions to qualify for the exemption contained in 40 CFR § 262.34(a) and 25 Pa. Code §

262a.10. The enumerated factors listed in the CAFO are: (1) failing to mark the date which the accumulation began; (2) failing to inspect container areas at least weekly; (3) failure to provide hazardous waste training; (4) failing to maintain records of hazardous waste training; (5) failing to mark hazardous waste containers; and (6) failing to keep five gallon fiber drums closed when not adding or removing waste. The associated penalty amount listed in the "Summary of Counts and Associated Penalties" for Count I alone is \$34,850.00.

Counts II-VI contain allegations of five of the same factors that are alleged in Count I, as justification to show why CSI was not eligible for the exemption under 40 CFR § 262.34(a) and 25 Pa. Code § 262a.10. The factors listed for Counts II-VI are: (1) failing to keep a hazardous waste container closed when not adding or removing waste; (2) failing to inspect container areas at least weekly; (3) failure to keep records of weekly inspections of hazardous waste areas; (4) failure to provide annual hazardous waste training; (5) failure to prepare and maintain hazardous waste training plan and records. The total penalty amount listed in the "Summary of Counts and Associated Penalties" for Counts II-VI is an additional \$40,293.00.

Since the factors that were alleged in Count I for why CSI did not qualify for the 40 CFR § 262.34(a) (25 Pa. Code § 262a.10) exemption, and therefore, a basis for why CSI was required to have a permit or interim status, are the *same* and not independent of or substantially distinguishable from the allegations contained in Counts II-VI, the penalties related to these alleged violations should be compressed as provided in the Penalty Policy. See Penalty Policy at pp. 21-22¹.

In addition to the proposed compression, for the reasons stated above, the Penalty Policy also provides, in instances where a company's failure to satisfy one statutory or regulatory requirement either necessarily or generally leads to the violation of numerous other independent regulatory requirements, compression of those penalties is similarly appropriate. *Id.* This is only logical, as a single or series of small violations can set off a proverbial "chain reaction," providing a predicate for multiple additional violations, when that single oversight was the true act or omission.

The Penalty Policy uses as an example a situation where a facility fails to obtain a permit or interim status and as a consequence runs afoul of numerous other regulatory requirements. In such a situation, the Penalty Policy guides enforcement personnel to forego separate penalties when viewing the total penalty through the lens of the gravity of the underlying act, and its effect on the deterrence of future behavior. *Id.*

In this case, not only did Combined System immediately cure the alleged violations, but the violations alleged in Count I necessarily forms the basis of at least those contained in Counts VII and XIII, as those Counts contain requirements that would only have arisen *if* CSI needed the permit instead of relying on the § 262.34(a) exemption. In other words, but for the violations alleged in Count I, there would be no requirement to violate in the later Counts. As such, the proposed penalty should be compressed and reduced.

¹ CSI's remedial efforts are documented in Attachment A.

Multi-day Penalties

Based both on the provisions of the Penalty Policy, and the information contained in Attachment A (that provides evidence contrary to some of these multi-day allegations), CSI believes that a reduction in the multi-day penalties is appropriate as those currently proposed in the draft CAFO are not required, not are they necessary to meet the goals of the Penalty Policy.

The Penalty Policy provides that multi-day penalties are discretionary in cases where the alleged violations have a gravity-based designation of minor/moderate, and are presumed for days 2-180 in cases where the gravity-based designation is moderate/moderate (and discretionary beyond day 180). The Agency's letter of March 10, 2009 contains the following multi-day penalties:

- Counts I and XIII (moderate/moderate), 179 days, total multi-day = \$26,850.00;
- Counts III & VI (minor/moderate), 156 weeks, total multi-day = \$21,060.00; and
- Count IV (moderate/moderate), 2 years, total multi-day = \$8,300.00.

In determining whether to assess multi-day penalties and what penalty amount is appropriate under the circumstances, the Penalty Policy provides the Agency should analyze the facts of the case in the context of the broad goals of the Penalty Policy, which include: fair penalties that reflect the seriousness of the violations; promoting prompt and continuing compliance and deterring future non-compliance. Additional factors that should be considered include: the seriousness of the violation relative to other violations falling within the same matrix cell; efforts at remediation or the promptness and degree of cooperation evidenced by the facility, the size and sophistication of the violator; the total number of days of the violation and other relevant considerations.

In the present case, CSI, a small privately owned business, cooperated with the Agency, volunteered information and access, and cured the alleged violations almost immediately, listening to Agency personnel and investigating the alleged violations to quickly set in place procedures to ensure future RCRA compliance. Those efforts are documented in Attachment A.

Based on these exemplary actions and the attention of this small business that is vital to the community, and in accordance of guidance contained in the Penalty Policy, CSI believes the multi-day penalty amounts listed in the "Summary of Counts and Associated Penalties" should be significantly reduced.

Penalty Range and Adjustment Factors

The penalties contained in the March 10, 2009 letter, related to the alleged violations contained therein, are generally at the higher end of the penalty range provided in the applicable cell of the Penalty Assessment Matrix. For the reasons noted above, the actions set forth in

Attachment A, and based upon the provisions of the Penalty Policy, CSI believes the penalty range should be much lower.

According to the Penalty Policy, enforcement personnel should rely on case-specific factors in selecting the dollar figure from the range of penalties and should make adjustments to the penalties based on certain factors, and include: the seriousness of the violation; environmental sensitivity of areas potentially threatened; efforts at remediation or degree of cooperation evidenced by the facility; the size and sophistication of the violator; and the number of days of violation and other relevant matters. Penalty Policy at p. 19.

In the present case, the following factors should drive the penalty range down:

- The alleged violations did not pose a significant threat to environmentally sensitive areas;
- CSI, a small privately owned business who cured all of the alleged violations extremely quickly;
- CSI has continually cooperated with EPA and Pennsylvania Department of Environmental Protection; and
- CSI has set into place procedures to ensure future RCRA compliance.

See Attachment A.

Based on the Penalty Policy, CSI's cooperative and responsive actions, and for the reasons noted above, CSI believes the penalty ranges and penalties should be significantly reduced.

The Penalty Policy, as well as RCRA section 3008(a)(3), allows enforcement personnel to adjust the amount of a penalty downward based on good faith efforts to comply, and the degree of willfulness and/or negligence. Penalty Policy at pp 34-37. As set forth in Attachment A, the actions taken by CSI to immediately and voluntarily cured the violations alleged provide ample support for its good faith. In addition, in the twenty-two months since the inspection took place, CSI has been in full compliance, and has remained an important part of its community. Therefore, we respectfully request the penalty amounts contained in the "Summary of Counts and Associated Penalties" be adjusted downward.

Conclusion and Suggested Penalty

For the reasons noted above, CSI believes the penalty amounts contained in EPA's March 10, 2009 letter and corresponding "Summary of Counts and Associated Penalties" should be reduced. In particular, some of the penalties should be reduced by compressing them; some should be reduced by limiting multi-day penalties; and some should be reduced by lowering the penalty range and applying certain adjustment factors. As a result, CSI suggests a total penalty of \$46,500.00, and further respectfully request that \$26,000.00 of such be suspended in light of CSI's good faith, community standing, and compliance history.

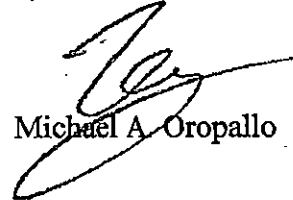
John Ruggero, Esq.

May 8, 2009

Page 5

Thank you for your time and consideration. We look forward to your response, and will make ourselves available to discuss the matter further.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Oropallo", written over the typed name.

Michael A. Oropallo

MAO:deb

Enclosure

cc: Danielle E. Mettler, Esq.

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FOR SETTLEMENT PURPOSES ONLY

Date: May 8, 2009
EPA ID: PAR000039875

Below are the violations that were alleged in the December 8, 2008 letter from Carol Amend, Associate Director of the EPA Office of Land Enforcement, and the actions that have been taken by Combined Systems, Inc. related to each.

1. **CTS-CSI followed the practice of marking each 1-cubic yard cardboard box containing hazardous waste generated by CTS-CSI with the date when the box became full, rather than the date when CTS-CSI began accumulating hazardous waste in that box, as specified in 40 C.F.R. § 262.34(a)(2).**
 - As of June 27, 2007, all cubic yard boxes are labeled and dated prior to any material being placed in to the container.
 - Previous cubic yard boxes were shipped on 21 May 2007 and 18 April 2007. Indicated boxes were promptly shipped out for destruction.
2. **On June 26, 2007, CTS-CSI was storing hazardous waste (expired chemical identified as D001) in two 55-gallon drums that were not clearly marked where visible for inspection with the date upon which the period of accumulation began in accordance with 40 C.F.R. § 262.34(a)(2). The drums were located in Container A-4.**
 - Drums contained materials that were found to be off-spec and were determined that they were not to be used. Drums were brought from storage and placed in Container A4 on June 18, 2007, and pulled from the container on June 30, 2007 to where it was placed in Building O. Drums were shipped on July 17, 2007.
 - Indicated drums were in Container A4 for no greater than 12 days before being placed in Building O.
 - From determination that the materials were off-spec to when they were shipped off for disposal was conducted in a prompt manner.
 - As of June 30, 2007, Container A4 is no longer used for the interim storage of hazardous waste of any kind. All hazardous waste is placed in Building O until shipped.

3. **CTS-CSI followed the practice of storing hazardous waste, including, among other things, solvent-contaminated rags, in 14-gallon red "fire" cans, located in several buildings, that were not marked with the words "Hazardous Waste" or other words identifying their contents in accordance with 40 C.F.R. § 262.34(c)(1)(ii).**
 - Drum was relabeled on June 27, 2007
 - Waste was left in the drum not properly labeled for no greater than 3 days.
 - Waste is picked up on a daily basis, and was located in the drum no earlier than June 25, 2007. Waste bags are picked up and brought to Building O, where they are inspected, sorted, weighted, and placed in to shipping containers.
4. **CTS-CSI failed to mark 30-gallon drums of hazardous waste located outside of Building I with the words "Hazardous Waste" or other words identifying their contents in accordance with 30 C.F.R. § 262.34 (c)(1)(ii).**
 - Drums were relabeled on June 27, 2007.
 - Waste was left in the drum not properly labeled for no grater than 9 days.
 - Waste is picked upon a daily basis, and was located in the drum no earlier than June 18, 2007. Waste bags are picked up and brought to Building O, where they are inspected, sorted, weighted, and placed in the shipping containers.
5. **CTS-CSI stored spent solvent in two 55-gallon drums, one in Building C and one in Building H, that were not marked with the words "Hazardous Waste" or other words identifying their contents in accordance with 40 C.F.R. § 262.34 (c)(1)(ii).**
 - Drums were relabeled on June 27, 2007.
6. **CTS-CSI failed to keep closed a 5-gallon fiber drum of hazardous waste (black/smokeless powder) in Building D2 while nothing was being added to or removed from the drum, in accordance with 40 C.F.R. § 262.34(c)(1)(i), which incorporates 40 C.F.R. § 265.173(a) by reference.**
 - Container was removed from this area and replaced with quart container specifically labeled for black/smokeless powder.
 - Replacement and retraining of operators in this area occurred on June 27, 2007.
7. **CTS-CSI failed to inspect at least weekly the areas (Building O and Container A-4) where containers of hazardous waste have been stored, in accordance with 40 C.F.R. § 262.34 (a)(1)(ii), which incorporates 40 C.F.R. § 265.174 by reference.**
 - Material Waste Management Inspection Checklist CTS-4-034 was revised on July 9, 2007.

- New inspection form denotes areas by building in columns that designate a pass or fail, a note section to record deficiencies for each building, and then a general notes column for other comments or concerns.
 - From June 26, 2007 to May 1, 2009 there have been 86 completed inspections.
8. **CTS-CSI failed to provide training during 2003, 2004, and 2006 to teach facility personnel responsible for hazardous waste management how to perform their duties and failed to maintain records to document such training, in accordance with 40 C.F.R. § 262.34 (a)(4), which incorporates 40 C.F.R. § 265.16 by reference.**
- RCRA Hazardous Waste Handling Training conducted on February 7, 2007.
 - RCRA Hazardous Waste Handling Training conducted on May 22 and 23, 2008.
- A. **CTS-CSI failed to determine whether the aerosol cans it discarded prior to 2007 were hazardous waste as required by 25 Pa. Code § 262a.10, which incorporates 40 § C.F.R. §262.11 by reference.**
- Waste profile completed by Clean Management Environmental. Current copy is signed February 4, 2008.
- B. **CTS-CSI failed to complete and distribute a hazardous waste manifest for each shipment of aerosol cans that CTS-CSI sent offsite for disposal prior to 2007, as required by 25 Pa. Code § 262a.10 and .20.**
- C. Since June 27, 2007 containers were placed in areas where aerosols were used to collect spent aerosol cans. None of the waste receptacle cans were filled. Regardless, all the cans were collected from satellite locations and placed into a single container in the first week of December for the whole year. One 30 gallon drum was shipped out February 11, 2009
- D. **During 2004 through 2007, CTS-CSI violated 25 PA. Code § 262a.10 which incorporates by reference 40 C.F.R. §262.12©, by offering approximately 800 aerosol cans containing hazardous waste to a transporter and a disposal facility that had not received an EPA identification number for the transportation or disposal of hazardous waste.**
- As part of the waste check and pick-up, personnel were continually reminded to place aerosols in to the designated receptacle containers. Residual waste containers were periodically inspected to verify that no hazardous or recyclable materials were accidentally discarded into the wrong trash container.
- D. **During 2004 through 2007, CTS-CSI violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.18(a), by sending approximately 286 "universal waste" lamps for disposal at a place that was not owned or operated by a universal waste handler.**

- Universal Waste Florescent Bulbs were shipped to USA Lamp Ballast & Recycling, Inc., on May 21, 2008.

E. On June 26, 2007, CTS-CSI was violating 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7 and .8, because it had failed to retain on-site the copies of all written notices describing, among other things, the generation and disposition of hazardous wastes that were initially prohibited from land disposal at the point of generation at the facility.

- As of June 2007, copies of all Restricted Waste Notification and Certification forms are maintained with every Uniform Hazardous Waste Manifest.



Jan Szaro/R3/USEPA/US

06/11/2007 10:09 AM

To ekarmilovi@state.pa.us

cc Carol Amend/R3/USEPA/US@EPA, Ken
Cox/R3/USEPA/US@EPA, JeannaR
Henry/R3/USEPA/US@EPA

bcc

Subject Upcoming RCRA Subtitle C Inspection

History:

✉ This message has been replied to.

Good morning Ed,

Jeanna Henry and I will be conducting Subtitle C inspections at the following facilities in the Meadville, PA area the week of June 25th - 29th:

Tuesday June 26th - Jeanna will lead the inspection of the Combined Tactical Systems facility in Jamestown, PA. The facility is in Mercer County and the RCRA ID number is PAR000039875.

Wednesday June 27th - I'll lead the inspection of the Lord Corporation facility in Saegertown, PA. The facility is in Crawford County and the RCRA ID number is PAD048203822. We've scheduled our trip such that we have Thursday June 28th open as a potential second day to spend at this facility. This is the facility that has the issue with the rail cars sent with hazardous waste to a TSDF that are then returned to the facility with a new hazardous waste manifest due to heels remaining in the rail cars. We have had some discussion with John Crow and Richard Strawn of the Northwest Regional Office pertaining to this situation.

Please let us know if any PADEP representatives will be accompanying us on either or both of these inspections so we can then coordinate the logistics. I can be reached at (215) 814-3421 and Jeanna can be reached at (215) 814-2820.

Thanks,

Jan Szaro, Environmental Engineer
US Environmental Protection Agency, Region 3
RCRA Compliance and Enforcement Branch (3WC31)
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